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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,655	09/29/2003	Vivian A. Wright	127000.0301	4783

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PITTSBURGH, PA 15219

EXAMINER
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DIXON, ANNETTE FREDRICKA

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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06/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/674,655

Applicant(s)

WRIGHT, VIVIAN A.

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action is in response to the amendment filed on April 19, 2007.

Examiner acknowledges claims 1-15 are pending in this application with claim 1 having been amended, and claims 8-15 having been withdrawn from consideration.

#### ***Information Disclosure Statement***

2. The information disclosure statement filed January 18, 2006, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

3. Specifically, Applicant has not included a copy of "Tegadern Versus Gauze Dressing in Breast Surgery".

#### ***Drawings***

4. The drawings are objected to because there is an extra element number "700" that does not have a leader line for pointing to an element in the drawing.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: exhaled air "800".

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: elements "515", "520", "525", and "905".

7. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worthington (GB 2369591 A) in view of Burrell et al. (6,333,093).

11. As to Claim 1, Worthington discloses a nebulizing pad comprising: a flap (5), and an absorbent central core (1) attached to the flap (5), wherein the flap includes an adhesive coating (3). Yet Worthington does not expressly disclose the use of a nebulizing agent on the absorbent central core. However, at the time the invention was made the use of a nebulizing agent on the central core of a nebulizing pad was well known. Specifically, Burrell discloses the procedure of adding water to a surgical dressing in order to maintain the humidity of the wound in hopes of decreasing the risk of infection. (Column 18, Lines 28-40). From a close reading of Applicant's specification, Applicant has designated water as an example of a nebulizing agent to be dispensed on the absorbent core for providing humidity control to the tracheostomy incision. Further, as well known in the art, the tracheostomy incision is in fact an open wound. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Worthington to include the application of water onto the pad, as taught by Burrell to assist in the controlling of infection and humidity at the wound site.

As to Claim 2, Worthington discloses the adhesive coating is pressure sensitive. Inherently, self-adhesive strips facilitate the adhesion by applying pressure. (Page 4).

As to Claim 3, Worthington discloses the adhesive coating includes one or more adhesive strips. (Page 4, Lines 1-13).

As to Claim 4, Worthington discloses the flap (5) is shaped as an arched rectangle. (Figure 2b).

As to Claim 5, Worthington discloses the flap (5) is flexible. Inherently, the flexible nature of the flap enables the proper placement of the device onto the patient.

As to Claim 6, Worthington discloses the absorbent central core (1) is made from fabric or foam. (Page 5, Lines 10-15).

As to Claim 7, Worthington discloses the absorbent central core (1) includes one or more portions that are pervious to liquids and thus assist in the maintaining of proper temperature and humidity conditions within the patient's airway. (Page 4, Lines 15-20).

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art listed below, shows additional inventions in the field of wound dressings that utilize water as a nebulizing agent.

*Burton (2004/0133143); Miller (4,382,507); and Reed et al. (5,653,699)*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

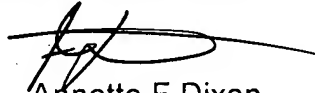
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Annette F Dixon  
Examiner  
Art Unit 3771



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6/13/07